IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7294 OF 2007

Indusind Bank Limited ...Petitioner
V/s.
M/s.Inteltek & Ors. ...Respondents

Mr.Prakash Shinde i/b. M/s.M.Dhruva & Co. for the Petitioner.
Mr.Milind Wasudeo i/b. Ms.Suman Jain for Respondent Nos.1 to 5.
Mrs.S.S. Bhende, AGP for Respondent No.6.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATED : DECEMBER 10, 2007

P.C. :-

1. Rule. Rule made returnable forthwith. By consent of parties, petition is taken up for final hearing.

2. By this petition, the petitioner challenges the order dated 16th June, 2006 passed by the District Magistrate, Pune. Before the District Magistrate, an application was made under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act) in relation to the assets which

according to the petitioner Bank were secured assets. The objections were raised by the respondents in relation to the properties to which the application relates. Objection was that some of the property was agricultural property and therefore, Securitisation Act, does not apply. There was also an objection raised in relation to some properties indicating that there is a sitting tenant and therefore, the Magistrate cannot take possession. There was also objection raised that an application under the DRT Act has been made by the bank and it is pending and therefore, proceedings under the Securitisation Act are not maintainable.

3. Perusal of the order impugned in this petition shows that though the learned Magistrate has referred two objections, first, regarding the property being agricultural land, therefore, provisions of Securitisation Act do not apply and second, there are tenants on the property, therefore, the Magistrate not being in a position to take possession. The learned Magistrate has not recorded any finding and has disposed of the application merely relying on the judgment of

Punjab and Haryana High Court which held that if an application is made under the DRT Act and is pending, application under the Securitisation Act is not maintainable.

4. We have been pointed out the judgment of the Supreme Court in the case of **M/s. Transcore v. Union of India & Anr. reported in AIR 2007 SC 712.** Perusal of that judgment shows that an application under the Securitisation Act is maintainable even though an application before DRT has been made by the bank and is pending. In view of the judgment of the Supreme Court in the case of **M/s.Transcore** referred to above, the findings recorded by the learned Magistrate, relying on the judgment of the Punjab and Haryana High Court that the application under Section 14 filed by the bank is not maintainable in view of the pendency of the proceedings filed by the bank under the DRT Act, has to be set aside. It is, accordingly, set aside. As the Magistrate has not recorded any finding on the above referred two objections raised, in our opinion, following order would meet the ends of justice :-

1) The order impugned in this petition is set aside.

2) The application filed by the petitioner bank is remitted back to the learned Magistrate for denovo consideration and decision, in accordance with law.

5. Rule is made absolute accordingly. No order as to costs.

(D.K. DESHMUKH, J.)

(V.M. KANADE, J.)